

Clotilde Tomasso

V.

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ORDER

ORDERED, ADJUDGED AND DECREED,

Entered as an Order of this Court at Providence on this 28th day of February, 2013.

By Order:

/s/

Stephen C. Waluk
Chief Clerk

Enter:

/s/

Jeanne E. LaFazia
Chief Judge

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION**

Clotilde R. Tomasso :
v. : A.A. No. 12 - 236
Dept. of Labor & Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Clotilde Tomasso urges that the Board of Review of the Department of Labor and Training erred when it held that she was disqualified from receiving unemployment benefits because she was not fully available for work within the meaning of Gen. Laws 1956 § 28-44-12. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons stated below, I conclude that the Board's decision should be reversed; I so recommend.

I. FACTS & TRAVEL OF THE CASE

Claimant, an employee of Manhattan Housing, filed a claim for benefits effective in June of 2011. In fact she received benefits during certain weeks in the months of June and

July, 2011. However, on August 10, 2012, the Director of the Department of Labor and Training determined that she had been overpaid based on the application of two separate provisions of the Employment Security Act: (1) first, invoking Gen. Laws 1956 § 28-44-12, the Director found that Ms. Tomasso should have been disqualified for benefits for the weeks-ending July 2, 2011, July 9, 2011, and July 16, 2011; and, second, applying Gen. Laws 1956 § 28-44-7, the Director determined that she was overpaid during the weeks-ending June 25, 2011 and July 23, 2011 because she did not properly report wages earned (which are offset against benefits received).

Ms. Tomasso took appeals from these decisions and hearings were scheduled before Referee Raymond Maccarone on September 13, 2012. The Referee affirmed both decisions. Ms. Tomasso filed a second appeal. The Board of Review considered her appeals on the basis of the record taken before the Referee and, on October 24, 2012, unanimously affirmed both decisions. Thereafter, Ms. Tomasso filed a complaint for judicial review in the Sixth Division District Court.

II. STANDARD OF REVIEW

The pertinent standard of review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

42-35-15. Judicial review of contested cases.

* * *

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;

- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’ ”¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

* * * eligibility for benefits is to be determined in the light of the expressed legislative policy that “Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family.” G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

² Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

³ Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968). Also D'Ambra v. Bd. of Review, Dept of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

III. ISSUE

The issue before the Court is whether the claimant was properly disqualified from receiving benefits because she failed to satisfy the availability requirement enumerated in section 28-44-12 and whether the decision below was made upon lawful procedure.

IV. ANALYSIS

Ms. Tomasso urges that the decisions of the Board of Review on the issues of Availability under section 28-44-12 and partial benefits under section 28-44-7 were erroneous. But in examining the record that was transmitted to the Court for its review, I found that a third legal issue — procedural in nature — also presented itself. I refer to the fact that the Director reversed his prior determination allowing Claimant benefits more than one year after he originally allowed her benefits. A section of the Employment Security Act limits such the Director's authority to make such redeterminations to a one-year period after benefits were allowed. See Gen. Laws 1956 § 28-44-39(a)(1)(i) and (b).

That the instant case falls within the ambit of this rule is perfectly clear — she was allowed to receive benefits in June and July of 2011 and the redetermination did not arrive until August of 2012. Accordingly, I shall consider the issue sua sponte. Having done so, I have concluded that the Director's redeterminations regarding Ms. Tomasso must be vacated. Therefore, I need not reach the issues presented under sections 28-44-12 and 28-44-7.

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board must be upheld unless it was, inter alia, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious, or contrary to law, or made upon unlawful procedure. The Court, when reviewing a Board decision, does not have the authority to expand the record by receiving new evidence or testimony. Accordingly, I find that the Board of Review's decision (adopting the finding of the Referee) affirming the redeterminations of the Director were made upon unlawful procedure and must be set aside.

CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decision of the Board of Review was affected by error of law and made upon unlawful procedure. Gen. Laws 1956 § 42-35-15(g)(3),(4).

Accordingly, I recommend that the decision of the Board be REVERSED.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

FEBRUARY 28, 2013